

1
2 **BEFORE THE FEDERAL ELECTION COMMISSION**
3

4
5 In the Matter of Mail Fund, Inc.)
6)

MUR 5635
7)

8 **GENERAL COUNSEL'S BRIEF**
9

10 **I. INTRODUCTION**

11 On December 14, 2004, the Federal Election Commission (the "Commission") found
12 reason to believe that Mail Fund, Inc. ("Mail Fund") made prohibited corporate contributions to
13 Conservative Leadership Political Action Committee ("CLPAC" or the "Committee") in
14 violation of 2 U.S.C. § 441b(a).¹ The prohibited contributions totaled \$1,490,173. Based on a
15 review of the circumstances surrounding the prohibited contributions, this Office is prepared to
16 recommend that the Commission find probable cause to believe that Mail Fund violated 2 U.S.C.
17 § 441b(a) by making prohibited corporate contributions to CLPAC.

18 **II. ANALYSIS**

19 **A. Background Information**

20 American Target Advertising, Inc. ("ATA"), is a direct mail marketing company owned
21 by the Viguerie Company ("TVC").² On July 6, 2000, CLPAC hired ATA to provide direct
22 mail, telemarketing and Internet fundraising services to the Committee in the months leading up

¹ This matter was generated as a result of the Commission's audit of CLPAC. This audit, undertaken in accordance with 2 U.S.C. § 438(b), *see* 2 U.S.C. § 437g(a)(2), covered the period January 1, 1999 through December 31, 2000. Thus, all of the relevant facts recounted in this brief occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are to the Act as it read prior to the effective date of BCRA. The Commission approved the Report of the Audit Division on CLPAC on November 18, 2004.

² TVC is a company headquartered in suburban Virginia and has been providing direct mail fundraising services since the mid-1960's.

1 to the November 2000 general election.³ ATA sought vendors to produce and mail the
2 fundraising solicitations, but did not itself advance the funds to the vendors to pay for the
3 postage for CLPAC's fundraising solicitations. Instead, in July 2000, Mail Fund began
4 advancing funds to the vendors to finance the purchase of postage and the rental of mailing lists.
5 ATA spreadsheets show that by September 28, 2001, Mail Fund had advanced a total of
6 \$1,490,173 to the vendors to pay for postage and mailing list rental to carry out CLPAC's
7 fundraising solicitations.⁴ In the parlance of the direct mail industry, such advances are generally
8 referred to as "postal loans." Mail Fund was repaid in full from the CLPAC escrow account.

9 In addition to making short-term loans for the purchase of postage and mailing list
10 rentals, Mail Fund also paid off some of CLPAC's outstanding bills. ATA accounting records
11 indicate that Mail Fund paid other vendors \$68,254 to compensate them for goods and services
12 they provided in connection with the CLPAC fundraising program. There is no evidence that
13 CLPAC repaid Mail Fund the \$68,254 or that Mail Fund made any attempt to collect on the
14 CLPAC debts that it paid.

15 B. Mail Fund Made Prohibited Corporate Contributions to CLPAC

16 The Act prohibits corporations from making contributions to political committees,
17 2 U.S.C. § 441b(a), and defines a contribution as any "direct or indirect payment, distribution,
18 loan, advance, deposit, or gift of money or any services or anything of value" to any organization
19 in connection with a federal election. 2 U.S.C. § 441b(b)(2). Exempt from this definition are
20 bank loans made in the ordinary course of business. 11 C.F.R. § 100.7(b)(11). Mail Fund is a

³ CLPAC is a multi-candidate committee that first registered with the Commission in 1972.

⁴ This figure does not include interest Mail Fund charged on the loan amounts. The Final Audit Report, which was mailed to Mail Fund on January 11, 2005, stated that Mail Fund billed CLPAC a total of \$1,274,010 for postage and \$123,242 for list rental during the period July 20, 2000 through December 31, 2000. Final Audit Report at page 8. The audit period extended only through December 31, 2000. ATA's spreadsheets, however, show that between January 1, 2001 and September 28, 2001, Mail Fund billed CLPAC an additional \$92,921, bringing the total amount Mail Fund loaned to \$1,490,173.

1 Maryland corporation, not a bank; and its funds, which were used to subsidize the fundraising of
2 a federal political committee in connection with the 2000 election, were contributions under the
3 Act. 2 U.S.C. § 441(b)(2).

4 While the Act allows corporations to extend credit to political committees under certain
5 circumstances, *see* 11 C.F.R. § 100.55, Mail Fund's activity was not the sort addressed by the
6 Act and regulations. The regulations define an extension of credit as including an agreement
7 between a creditor and a committee that full payment is not due until after goods and services are
8 provided. 11 C.F.R. § 116.1(e). Mail Fund provided no goods or services to CLPAC; it
9 advanced over \$1,400,000 to direct mail vendors to pay for CLPAC mailings. Even if postal
10 lending (i.e. advances to direct mail vendors to pay for postage) is common in contracts for direct
11 mail marketing, the arrangement by which Mail Fund paid costs of CLPAC's fundraising
12 benefited this federal political committee. Mail Fund's payments were contributions under the
13 Act. 2 U.S.C. § 441(b)(a).

14 The Commission has addressed arrangements comparable to the postal loans from Mail
15 Fund in two prior enforcement matters. The first case, MUR 3027, stemmed from an
16 arrangement between the Viguerie Company and Direct Marketing Finance and Escrow, Inc.
17 ("DMFE"). The Viguerie Company had engaged DMFE to provide loans (i.e. advances) for
18 postage to benefit one of the Viguerie Company's clients, the Public Affairs Political Action
19 Committee ("PAPAC"). Like Mail Fund, DMFE functioned as a third-party vendor, while the
20 Viguerie Company, like ATA in the instant matter, served as PAPAC's primary vendor. The
21 Commission found reason to believe that DMFE made contributions to PAPAC when it made the
22 postal loans and, because it was a corporation, that its contributions violated the Act's
23 prohibition on corporate contributions. *See* 2 U.S.C. § 441b. Ultimately, the Commission issued

DMFE an admonishment letter warning that "arrangements in which third-party, non-banking lenders finance the activities of federal political committees appear to violate 2 U.S.C. § 441b(a)."

The second matter, also involving DMFE, MUR 5173, led the Commission to find probable cause to believe that DMFE had knowingly and willfully violated the Act. In MUR 5173, DMFE again had provided short-term loans on behalf of a federal political committee (Republicans for Choice Political Action Committee) to pay vendors who supplied postage, donor lists and other fundraising services to that committee. The Commission found probable cause to believe DMFE and its president knowingly and willfully violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions in the form of these short-term loans

The facts in those two MURS are indistinguishable from the facts of this matter. Like DMFE, Mail Fund's loans were advances to vendors to finance work they did for a political committee, and like DMFE's advances, Mail Fund's advances constituted a contribution to CLPAC.

In addition to the advances, Mail Fund paid other third-party vendors \$68,254 on CLPAC's behalf for goods and services the vendors provided in support of the CLPAC direct mail fundraising program.

By making these advances (\$1,490,173) and payments (\$68,254), Mail Fund made a prohibited corporate contribution of \$1,558,427 to the Committee. 2 U.S.C. § 441b(a); 11 C.F.R. § 100.7(a)(1)(iii)(A). Thus, this Office is prepared to recommend that the Commission find that there is probable cause to believe that Mail Fund, Inc. made prohibited corporate contributions to Conservative Leadership Political Action Committee in violation of 2 U.S.C. § 441b(a).

III. RECOMMENDATION

Find probable cause to believe that Mail Fund, Inc. violated 2 U.S.C. § 441b(a) by making prohibited corporate contributions to Conservative Leadership Political Action Committee.

7/25/05
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